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UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JAYLEN SIMMONS-BORDERS,

15 Defendant.
16

ED CR No. 23-153-JGB

PLEA AGREEMENT FOR DEFENDANT
JAYLEN SIMMONS-BORDERS

17
18 1. This constitutes the plea agreement between Jaylen Simmons-
19 Borders ("defendant") and the United States Attorney's Office for the
20 Central District of California (the "USAO") in the above-captioned
21 case. This agreement is limited to the USAO and cannot bind any
22 other federal, state, local, or foreign prosecuting, enforcement,
23 administrative, or regulatory authorities.

24 DEFENDANT'S OBLIGATIONS

25 2. Defendant agrees to:

26 a. At the earliest opportunity requested by the USAO and
27 provided by the Court, appear and plead guilty to counts one and two
28 of the indictment in United States v. Jaylen Simmons-Borders, ED CR

1 No. 23-153-JGB, which charge defendant with Engaging in the Business
2 of Dealing in Firearms Without a License in violation of 18 U.S.C.
3 § 922(a)(1)(A) and Possession of a Machinegun in violation of 18
4 U.S.C. § 922(o).

5 b. Not contest facts agreed to in this agreement.

6 c. Abide by all agreements regarding sentencing contained
7 in this agreement.

8 d. Appear for all court appearances, surrender as ordered
9 for service of sentence, obey all conditions of any bond, and obey
10 any other ongoing court order in this matter.

11 e. Not commit any crime; however, offenses that would be
12 excluded for sentencing purposes under United States Sentencing
13 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
14 within the scope of this agreement.

15 f. Be truthful at all times with the United States
16 Probation and Pretrial Services Office and the Court.

17 g. Pay the applicable special assessments at or before
18 the time of sentencing unless defendant has demonstrated a lack of
19 ability to pay such assessments.

20 THE USAO'S OBLIGATIONS

21 3. The USAO agrees to:

22 a. Not contest facts agreed to in this agreement.

23 b. Abide by all agreements regarding sentencing contained
24 in this agreement.

25 c. At the time of sentencing, move to dismiss the
26 remaining counts of the indictment as against defendant. Defendant
27 agrees, however, that at the time of sentencing the Court may
28 consider any dismissed charges in determining the applicable

1 Sentencing Guidelines range, the propriety and extent of any
2 departure from that range, and the sentence to be imposed.

3 d. At the time of sentencing, provided that defendant
4 demonstrates an acceptance of responsibility for the offenses up to
5 and including the time of sentencing, recommend a two-level reduction
6 in the applicable Sentencing Guidelines offense level, pursuant to
7 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
8 additional one-level reduction if available under that section.

9 e. Recommend that defendant be sentenced to a term of
10 imprisonment no higher than the low end of the applicable Sentencing
11 Guidelines range, provided that the offense level used by the Court
12 to determine that range is 26 or higher and provided that the Court
13 does not depart downward in offense level or criminal history
14 category. For purposes of this agreement, the low end of the
15 Sentencing Guidelines range is that defined by the Sentencing Table
16 in U.S.S.G. Chapter 5, Part A.

17 NATURE OF THE OFFENSE

18 4. Defendant understands that for defendant to be guilty of
19 the crime charged in count one, that is, Engaging in the Business of
20 Dealing in Firearms Without a License, in violation of Title 18,
21 United States Code, Section 922(a)(1)(A), the following must be true:

22 a. The defendant was willfully engaged in the business of
23 dealing in firearms within the dates specified in the indictment; and

24 b. The defendant did not then have a license as a
25 firearms dealer.

26 c. "Engaging in the business of dealing in firearms"
27 means the defendant devoted time, attention, and labor to dealing in
28

1 firearms as a regular course of trade or business to predominantly
2 earn a profit through the repetitive purchase and resale of firearms.

3 d. "To predominantly earn a profit" means that the intent
4 underlying the sale or disposition of firearms is predominantly one
5 of obtaining pecuniary gain, as opposed to other intents, such as
6 improving or liquidating a personal firearms collection.

7 5. Defendant understands that for defendant to be guilty of
8 the crime charged in count two, that is, Possession of a Machinegun,
9 in violation of Title 18, United States Code, Section 922(o), the
10 following must be true:

11 a. First, the defendant knowingly possessed a machinegun;
12 and

13 b. Second, the defendant knew or was aware of the
14 characteristics that made the item a machinegun.

15 c. "Machinegun" means any weapon which shoots, is
16 designed to shoot, or can be readily restored to shoot, automatically
17 more than one shot, without manual reloading, by a single function of
18 the trigger. The term shall also include any part designed and
19 intended solely and exclusively, or combination of parts designed and
20 intended, for use in converting a weapon into a machinegun.

21 PENALTIES

22 6. Defendant understands that the statutory maximum sentence
23 that the Court can impose for a violation of Title 18, United States
24 Code, Section 922(a)(1)(A), is: 5 years' imprisonment; a 3-year
25 period of supervised release; a fine of \$250,000 or twice the gross
26 gain or gross loss resulting from the offense, whichever is greatest;
27 and a mandatory special assessment of \$100.

1 7. Defendant understands that the statutory maximum sentence
2 that the Court can impose for a violation of Title 18, United States
3 Code, Section 922(o), is: 10 years' imprisonment; a 3-year period of
4 supervised release; a fine of \$250,000 or twice the gross gain or
5 gross loss resulting from the offense, whichever is greatest; and a
6 mandatory special assessment of \$100.

7 8. Defendant understands, therefore, that the total maximum
8 sentence for all offenses to which defendant is pleading guilty is:
9 15 years' imprisonment; a 3-year period of supervised release; a fine
10 of \$500,000 or twice the gross gain or gross loss resulting from the
11 offenses, whichever is greatest; and a mandatory special assessment
12 of \$200.

13 9. Defendant understands that supervised release is a period
14 of time following imprisonment during which defendant will be subject
15 to various restrictions and requirements. Defendant understands that
16 if defendant violates one or more of the conditions of any supervised
17 release imposed, defendant may be returned to prison for all or part
18 of the term of supervised release authorized by statute for the
19 offense that resulted in the term of supervised release, which could
20 result in defendant serving a total term of imprisonment greater than
21 the statutory maximum stated above.

22 10. Defendant understands that, by pleading guilty, defendant
23 may be giving up valuable government benefits and valuable civic
24 rights, such as the right to vote, the right to possess a firearm,
25 the right to hold office, and the right to serve on a jury. Defendant
26 understands that he is pleading guilty to a felony and that it is a
27 federal crime for a convicted felon to possess a firearm or
28 ammunition. Defendant understands that the conviction in this case

1 may also subject defendant to various other collateral consequences,
2 including but not limited to revocation of probation, parole, or
3 supervised release in another case and suspension or revocation of a
4 professional license. Defendant understands that unanticipated
5 collateral consequences will not serve as grounds to withdraw
6 defendant's guilty plea.

7 11. Defendant and his counsel have discussed the fact that, and
8 defendant understands that, if defendant is not a United States
9 citizen, the convictions in this case make it practically inevitable
10 and a virtual certainty that defendant will be removed or deported
11 from the United States. Defendant may also be denied United States
12 citizenship and admission to the United States in the future.
13 Defendant understands that while there may be arguments that
14 defendant can raise in immigration proceedings to avoid or delay
15 removal, removal is presumptively mandatory and a virtual certainty
16 in this case. Defendant further understands that removal and
17 immigration consequences are the subject of a separate proceeding and
18 that no one, including his attorney or the Court, can predict to an
19 absolute certainty the effect of his convictions on his immigration
20 status. Defendant nevertheless affirms that he wants to plead guilty
21 regardless of any immigration consequences that his plea may entail,
22 even if the consequence is automatic removal from the United States.

23 FACTUAL BASIS

24 12. Defendant admits that defendant is, in fact, guilty of the
25 offense to which defendant is agreeing to plead guilty. Defendant
26 and the USAO agree to the statement of facts provided below and agree
27 that this statement of facts is sufficient to support a plea of
28 guilty to the charge described in this agreement and to establish the

Sentencing Guidelines factors set forth in paragraph 14 below but is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

Between March 12, 2023, and July 26, 2023, in Riverside County, within the Central District of California, defendant engaged in the business of dealing in firearms without a license. He did so through the repeated sales of firearms and machineguns to an undercover agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "UC"). Throughout the course of that business, defendant also possessed machineguns and an unregistered short-barreled rifle.

Specifically, in Riverside County, defendant sold the following firearms to the UC on the following dates, all with the principal objective of livelihood and profit and knowing that it was unlawful.

<u>Date</u>	<u>Item</u>
March 17, 2023	<ol style="list-style-type: none"> 1. A Glock, Model 17, 9mm caliber pistol, bearing serial number BENP796 2. A Taurus, Model 856, .38 caliber revolver, bearing serial number ABL107466
March 23, 2023	<ol style="list-style-type: none"> 1. A Glock, Model 30, .45 caliber pistol, bearing serial number SEE026 2. A Glock, Model 21, .45 caliber pistol, bearing serial number LGH133
July 26, 2023	<ol style="list-style-type: none"> 1. A Ruger, Model 10/22, .22 caliber rifle, bearing serial number 821-72228 2. A Smith & Wesson, Model M&P 40, .40 caliber pistol, bearing serial number NJN9458 3. A privately manufactured AR-type, .223 caliber rifle, bearing no manufacturer's mark or serial number 4. Four privately manufactured, 9mm caliber pistols, bearing no manufacturer's mark or serial number

<u>Date</u>	Item

Defendant did so without a license from the federal government to deal in firearms. Throughout the business relationship, the UC told defendant that the UC was shipping the firearms defendant sold to the Philippines or other countries. Defendant drove to the sale with Minor 1, a 17-year-old, in the passenger seat. Defendant parked next to the UC, got out of his car, and met with the UC at the UC's car. After some discussion, defendant turned to Minor 1, and Minor 1 retrieved the two firearms and handed them to defendant, who then handed them to the UC.

During the sale on March 17, 2023, defendant knowingly possessed and sold the UC a machinegun, namely, a machinegun conversion device (also known as a "Glock switch," "trigger switch," "auto switch," or "auto sear") that was designed and intended, solely and exclusively, for use in converting a weapon into a machinegun, and which was attached to a Glock, Model 17, 9mm caliber pistol, bearing serial number BENP796. Defendant knew that the item was a machinegun, as he had advertised the weapon to the UC as a fully automatic weapon.

During the sale on July 26, 2023, defendant also knowingly possessed and sold the UC eleven machinegun conversion devices, all of which defendant knew to be machineguns, and a privately manufactured, AR-type, .223 caliber rifle, bearing no manufacturer's mark or serial number, with a barrel of less than 16 inches in length, which defendant knew to be a firearm and a short-barreled rifle, as defined in Title 26, United States Code Sections 5845(a)(3) and 5845(c), and which had not been registered to defendant in the

1 National Firearms Registration and Transfer Record, as required by
2 Chapter 53, Title 26, United States Code.

3 SENTENCING FACTORS

4 13. Defendant understands that in determining defendant's
5 sentence the Court is required to calculate the applicable Sentencing
6 Guidelines range and to consider that range, possible departures
7 under the Sentencing Guidelines, and the other sentencing factors set
8 forth in 18 U.S.C. § 3553(a). Defendant understands that the
9 Sentencing Guidelines are advisory only, that defendant cannot have
10 any expectation of receiving a sentence within the calculated
11 Sentencing Guidelines range, and that after considering the
12 Sentencing Guidelines and the other § 3553(a) factors, the Court will
13 be free to exercise its discretion to impose any sentence it finds
14 appropriate up to the maximum set by statute for the crimes of
15 conviction.

16 14. Defendant and the USAO agree to the following applicable
17 Sentencing Guidelines factors:

18	Base Offense Level	18	U.S.S.G. § 2K2.1(a) (5)
19	8-24 Firearms	+4	U.S.S.G. § 2K2.1(b) (1) (B)
20	Trafficking of Firearms	+4	U.S.S.G. § 2K2.1(b) (5)

21 Defendant and the USAO reserve the right to argue that additional
22 specific offense characteristics, adjustments, and departures under
23 the Sentencing Guidelines are appropriate. The base offense level
24 set forth above is based on information currently known to the
25 government regarding defendant's criminal history. Defendant
26 understands and agrees that defendant's base offense level could be
27 increased if defendant is a career offender under U.S.S.G. §§ 4B1.1
28

1 and 4B1.2, or if defendant has additional prior conviction(s) for
2 either a crime of violence or a controlled substance offense under
3 U.S.S.G. § 2K2.1. If defendant's base offense level is so altered,
4 defendant and the USAO will not be bound by the base offense level
5 agreed to above.

6 15. Defendant understands that there is no agreement as to
7 defendant's criminal history or criminal history category.

8 16. Defendant and the USAO reserve the right to argue for a
9 sentence outside the sentencing range established by the Sentencing
10 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
11 (a)(2), (a)(3), (a)(6), and (a)(7).

12 WAIVER OF CONSTITUTIONAL RIGHTS

13 17. Defendant understands that by pleading guilty, defendant
14 gives up the following rights:

15 a. The right to persist in a plea of not guilty.

16 b. The right to a speedy and public trial by jury.

17 c. The right to be represented by counsel -- and if
18 necessary have the Court appoint counsel -- at trial. Defendant
19 understands, however, that, defendant retains the right to be
20 represented by counsel -- and if necessary have the Court appoint
21 counsel -- at every other stage of the proceeding.

22 d. The right to be presumed innocent and to have the
23 burden of proof placed on the government to prove defendant guilty
24 beyond a reasonable doubt.

25 e. The right to confront and cross-examine witnesses
26 against defendant.

1 f. The right to testify and to present evidence in
2 opposition to the charges, including the right to compel the
3 attendance of witnesses to testify.

4 g. The right not to be compelled to testify, and, if
5 defendant chose not to testify or present evidence, to have that
6 choice not be used against defendant.

7 h. Any and all rights to pursue any affirmative defenses,
8 Fourth Amendment or Fifth Amendment claims, and other pretrial
9 motions that have been filed or could be filed.

10 WAIVER OF APPEAL OF CONVICTION

11 18. Defendant understands that, with the exception of an appeal
12 based on a claim that defendant's guilty pleas were involuntary, by
13 pleading guilty defendant is waiving and giving up any right to
14 appeal defendant's convictions on the offenses to which defendant is
15 pleading guilty. Defendant understands that this waiver includes,
16 but is not limited to, arguments that the statutes to which defendant
17 is pleading guilty are unconstitutional, and any and all claims that
18 the statement of facts provided herein is insufficient to support
19 defendant's pleas of guilty.

20 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

21 19. Defendant agrees that, provided the Court imposes a total
22 term of imprisonment on all counts of conviction of no more than 78
23 months, defendant gives up the right to appeal all of the following:
24 (a) the procedures and calculations used to determine and impose any
25 portion of the sentence; (b) the term of imprisonment imposed by the
26 Court; (c) the fine imposed by the Court, provided it is within the
27 statutory maximum; (d) to the extent permitted by law, the
28 constitutionality or legality of defendant's sentence, provided it is

1 within the statutory maximum; (e) the term of probation or supervised
2 release imposed by the Court, provided it is within the statutory
3 maximum; and (f) any of the following conditions of probation or
4 supervised release imposed by the Court: the conditions set forth in
5 Second Amended General Order 20-04 of this Court; the drug testing
6 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the
7 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

8 20. The USAO agrees that, provided (a) all portions of the
9 sentence are at or below the statutory maximum specified above and
10 (b) the Court imposes a term of imprisonment of no less than 63
11 months, the USAO gives up its right to appeal any portion of the
12 sentence.

13 RESULT OF WITHDRAWAL OF GUILTY PLEA

14 21. Defendant agrees that if, after entering guilty pleas
15 pursuant to this agreement, defendant seeks to withdraw and succeeds
16 in withdrawing defendant's guilty pleas on any basis other than a
17 claim and finding that entry into this plea agreement was
18 involuntary, then (a) the USAO will be relieved of all of its
19 obligations under this agreement; and (b) should the USAO choose to
20 pursue any charge that was either dismissed or not filed as a result
21 of this agreement, then (i) any applicable statute of limitations
22 will be tolled between the date of defendant's signing of this
23 agreement and the filing commencing any such action; and
24 (ii) defendant waives and gives up all defenses based on the statute
25 of limitations, any claim of pre-indictment delay, or any speedy
26 trial claim with respect to any such action, except to the extent
27 that such defenses existed as of the date of defendant's signing this
28 agreement.

EFFECTIVE DATE OF AGREEMENT

22. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

23. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered guilty pleas pursuant to this agreement, defendant will not be able to withdraw the guilty pleas, and (b) the USAO will be relieved of all its obligations under this agreement.

24. Following the Court's finding of a knowing breach of this agreement by defendant, should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a. Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b. Defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 c. Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing (if such a hearing
6 occurred prior to the breach); (ii) the agreed to factual basis
7 statement in this agreement; and (iii) any evidence derived from such
8 statements, shall be admissible against defendant in any such action
9 against defendant, and defendant waives and gives up any claim under
10 the United States Constitution, any statute, Rule 410 of the Federal
11 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
12 Procedure, or any other federal rule, that the statements or any
13 evidence derived from the statements should be suppressed or are
14 inadmissible.

15 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

16 OFFICE NOT PARTIES

17 25. Defendant understands that the Court and the United States
18 Probation and Pretrial Services Office are not parties to this
19 agreement and need not accept any of the USAO's sentencing
20 recommendations or the parties' agreements to facts or sentencing
21 factors.

22 26. Defendant understands that both defendant and the USAO are
23 free to: (a) supplement the facts by supplying relevant information
24 to the United States Probation and Pretrial Services Office and the
25 Court, (b) correct any and all factual misstatements relating to the
26 Court's Sentencing Guidelines calculations and determination of
27 sentence, and (c) argue on appeal and collateral review that the
28 Court's Sentencing Guidelines calculations and the sentence it

1 chooses to impose are not error, although each party agrees to
2 maintain its view that the calculations in paragraph 14 are
3 consistent with the facts of this case. While this paragraph permits
4 both the USAO and defendant to submit full and complete factual
5 information to the United States Probation and Pretrial Services
6 Office and the Court, even if that factual information may be viewed
7 as inconsistent with the facts agreed to in this agreement, this
8 paragraph does not affect defendant's and the USAO's obligations not
9 to contest the facts agreed to in this agreement.

10 27. Defendant understands that even if the Court ignores any
11 sentencing recommendation, finds facts or reaches conclusions
12 different from those agreed to, and/or imposes any sentence up to the
13 maximum established by statute, defendant cannot, for that reason,
14 withdraw defendant's guilty pleas, and defendant will remain bound to
15 fulfill all defendant's obligations under this agreement. Defendant
16 understands that no one -- not the prosecutor, defendant's attorney,
17 or the Court -- can make a binding prediction or promise regarding
18 the sentence defendant will receive, except that it will be within
19 the statutory maximum.

20 NO ADDITIONAL AGREEMENTS

21 28. Defendant understands that, except as set forth herein,
22 there are no promises, understandings, or agreements between the USAO
23 and defendant or defendant's attorney, and that no additional
24 promise, understanding, or agreement may be entered into unless in a
25 writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

29. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

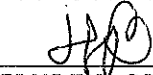
E. MARTIN ESTRADA
United States Attorney



MITCHELL M. SULIMAN
Assistant United States Attorney

11/22/23

Date



JAYLEN SIMMONS-BORDERS
Defendant

11-17-23

Date



JESSAKA MENZIE
Deputy Federal Public Defender
Attorney for Defendant
JAYLEN SIMMONS-BORDERS


11-17-23

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or

1 representations of any kind have been made to me other than those
2 contained in this agreement. No one has threatened or forced me in
3 any way to enter into this agreement. I am satisfied with the
4 representation of my attorney in this matter, and I am pleading
5 guilty because I am guilty of the charges and wish to take advantage
6 of the promises set forth in this agreement, and not for any other
7 reason.

8 
9 JAYLEN SIMMONS-BORDERS
Defendant

11-17-23
Date


10
11 CERTIFICATION OF DEFENDANT'S ATTORNEY

12 I am Jaylen Simmons-Borders's attorney. I have carefully and
13 thoroughly discussed every part of this agreement with my client.
14 Further, I have fully advised my client of his rights, of possible
15 pretrial motions that might be filed, of possible defenses that might
16 be asserted either prior to or at trial, of the sentencing factors
17 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
18 provisions, and of the consequences of entering into this agreement.
19 To my knowledge: no promises, inducements, or representations of any
20 kind have been made to my client other than those contained in this
21 agreement; no one has threatened or forced my client in any way to
22 enter into this agreement; my client's decision to enter into this
23 agreement is an informed and voluntary one; and the factual basis set

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25 ///

1 forth in this agreement is sufficient to support my client's entry of
2 guilty pleas pursuant to this agreement.

3 
4 _____
5 JESSAKA MENZIE
6 Deputy Federal Public Defender
7 Attorney for Defendant
8 JAYLEN SIMMONS-BORDERS
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11-17-23

Date